

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAM CLAYTON,

Plaintiff,

v.

MICHAEL CHERTOFF, et al.,

Defendants.

No. C 07-2781 CW

ORDER DENYING
WITHOUT PREJUDICE
PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT
(DOCKET NO. 5) AND
VACATING HEARING
DATE

On May 29, 2007, Plaintiff Sam Clayton initiated this action against Defendant Michael Chertoff, Secretary of the Department of Homeland Security, and others, seeking a writ of mandamus compelling Defendants to adjudicate his I-485 application for adjustment to lawful permanent resident status. That same day, he also filed a motion for leave to proceed in forma pauperis. The Court granted the motion and ordered the U.S. Marshal for the Northern District of California to serve Defendants. On June 20, 2007, the U.S. Marshal served the United States Attorney's Office and David Still. Two days later, Eduardo Aquire was served.

1 On July 9, 2007, Plaintiff filed a motion for summary
2 judgment, noticing it for hearing on July 26, 2007. Because
3 Defendants' answers are not due until August 20, 2007 and
4 August 21, 2007, Plaintiff's motion for summary judgment is DENIED
5 WITHOUT PREJUDICE and the hearing noticed for July 26, 2007 is
6 VACATED. Plaintiff may file his motion after Defendants have filed
7 their answers; however, his motion must be filed in accordance with
8 Civil Local Rule 7-2, which provides that "all motions must be
9 filed, served and noticed in writing on the motion calendar of the
10 assigned Judge for hearing not less than 35 days after service of
11 the motion."

12 IT IS SO ORDERED.

13
14 7/25/07

15 Dated: _____



16 CLAUDIA WILKEN
17 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

SAM CLAYTON,

Plaintiff,

v.

SECRETARY OF DEPARTMENT OF
HOMELAND SECURITY et al,

Defendant.

Case Number: CV07-02781 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 25, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Sam Clayton
1049 Market St. #203
San Francisco, CA 94103

U.S. Attorney
Civil Division
450 Golden Gate Avenue
San Francisco, CA 94102

Dated: July 25, 2007

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk

United States District Court
For the Northern District of California